

Judge Avern Cohn: Preliminary Jury Instructions - Criminal

Members of the Jury:

You have now been sworn as the jury to try this case. By your verdict, you will decide the disputed issues of fact. As the judge, I will decide questions of law that may arise during the trial. Before you retire to deliberate at the close of this case, I will instruct you on the rules of law that you must follow and apply in deciding upon your verdict.

Give careful attention to the testimony and evidence which is presented during the trial. However, do not form or expose any opinion about the case until you have heard all of the evidence and have had benefit of the closing arguments of the lawyers and my instructions on the applicable law.

The evidence, from which you will decide the facts, consists of the testimony of witnesses, documents and other things that are received into evidence as exhibits, and all facts which are admitted or stipulated by the parties.

Certain things are not evidence and cannot be considered by you:

1. Statements, arguments and questions by lawyers are not evidence.
2. Objections to questions are not evidence. Lawyers have an obligation to their clients to make an objection when they believe that the evidence which is being offered is improper under the rules of evidence. Do not be influenced by an objection or by my ruling on the objection. If an objection is sustained, ignore the question. If it is overruled, treat the answer like any other response. If I tell you that an item of evidence is being received for a limited purpose only, follow my instruction.
3. Any testimony that you have been instructed to disregard is not evidence and must not be considered in your deliberation on your verdict.
4. Anything you may see or hear outside this courtroom is not evidence and must be disregarded. You must decide the case solely on the evidence presented here in this courtroom.

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is proof of one fact from which you may infer or conclude that another fact exists. I will give you further instructions on these as well as other matters at the end of the case. However, keep in mind that you may consider both kinds of evidence.

Judge Avern Cohn: Preliminary Jury Instructions - Criminal

You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited to the statements of the witnesses. In other words, you are not limited solely to what you see and hear from the witnesses. You are permitted to draw such reasonable influences from facts which you feel are justified in the light of your own experience.

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness's testimony to accept or reject. I will give you some guidelines for this purpose at the end of the case. However, nothing that I say or do, or do not say or do not do, and nothing in my facial expressions or the inflections in my voice during the course of the trial should influence your verdict. Remember, although I am the judge of the law, you are the judge of the facts.

There are three basic rules about a criminal case that you must keep in mind.

First, the Defendant is presumed to be innocent until proven guilty. The Indictment against the Defendant is only an accusation - nothing more. It is not proof of guilt or anything else. The Defendant, therefore, starts out the case with a clean slate.

Second, the burden of proof is on the Government until the very end of the case. The Defendant has no burden to prove his innocence, or to present any evidence, or to testify. Since the Defendant has the right to remain silent, the law prohibits you from considering that the Defendant may not have testified in arriving at your verdict.

Third, the Government must prove the Defendant's guilt beyond a reasonable doubt. I will give you further instructions on this point later, but keep in mind that in this respect, a criminal case is different from a civil case.

You must not discuss the case with anyone, including your family, neighbors, friends, business associates, and fellow jurors at any time during the trial. You must not permit anyone to attempt to discuss it with you or in your presence. If anyone persists in talking with you about the case despite your request not to do so, report this to me by a note as soon as possible. However, do not discuss such a matter with any of your fellow jurors. Furthermore, in order to avoid the appearance of impropriety, you must not have any conversation with the parties, the lawyers, the witnesses or anyone else whom you may come to recognize as having some connection with this case, in or out of the courtroom, during your service as a juror. Do not talk with anyone who is associated with this case - not even to pass the time of day. In no other way can all of the parties be assured of the impartiality that they are entitled to from you as jurors.

Judge Avern Cohn: Preliminary Jury Instructions - Criminal

You must also avoid reading any newspaper articles that might be published about this case. If a newspaper headline catches your eye, do not read the article. You must also refrain from listening to, or observing, any news program or television or radio which mentions this case. Media accounts may be inaccurate and may contain matters which are not proper evidence for your consideration. You must base your verdict solely on what is presented in the courtroom.

Do not conduct any research or undertake any investigation of the case on your own. Finally, do not form any opinion until all the evidence has been presented. Keep an open mind until you start your deliberations at the end of the case.

The reason for these cautions, of course, is because it is your duty to decide this case solely on the basis of the testimony and evidence that is presented during the trial without consideration of any other matters.

During the trial, it may be necessary for me to talk with the lawyers from time to time out of your hearing concerning questions of law or procedure that require consideration by me alone. On occasion, you may be excused from the courtroom while I discuss these matters with the lawyers. I will try to limit such interruptions as much as possible. However, remember the importance of the issues in dispute at all times. Therefore, I ask you to be patient, even though the case may seem to move very slowly.

The case will proceed in the following order:

First, the Government will be given an opportunity to make an opening statement. The Defendant will be given opportunity to make an opening statement after the Government's opening statement, or the Defendant may defer making an opening statement until the conclusion of the Government's case. Neither party is required to make an opening statement. An opening statement is not evidence. It is simply designed to provide you with an introduction to the evidence which the party intends to produce.

Second, the Government will introduce evidence in support of its claims. At the conclusion of the Government's case, the Defendant will be given the opportunity to introduce the evidence. It is important to remember that a Defendant in a criminal case is not obliged to testify, introduce evidence, or to call witnesses. As mentioned earlier, the law precludes you from considering the Defendant's election not to testify, introduce evidence or call witnesses in your evaluation of the evidence. However, if the Defendant does introduce evidence, the Government will be given an opportunity to introduce rebuttal evidence.

Third, the parties will be given an opportunity to make closing arguments to you. These arguments are designed to provide you with the contentions of the parties on the basis of

Judge Avern Cohn: Preliminary Jury Instructions - Criminal

the evidence. What is said during the closing argument, just as what is said during the opening statement, is not evidence. The Government has the right to open and to Close the argument.

Fourth, I will then instruct you on th law which you are to apply in reaching your verdict.

After the evidence has been completed and the arguments and the instructions have been given to you, you will be asked to go to the jury room to consider your verdict. You will be asked to determine the facts from all of the testimony that you will have heard, and any other evidence that is admitted. You are the sole and exclusive judges of the facts. Neither I nor anyone else may invade your province. On the other hand, and with equal emphasis, you are bound to accept the rules of law that I give you, whether you agree with them or not.

Jurors are not permitted to ask questions of witnesses or of the attorneys. Therefore, please do not interrupt the lawyers during the course of the trial. However, if you are unable to hear a witness or a lawyer, please raise your hand, and I will see that the situation is corrected.

It may become necessary for me to warn a party, a witness or an attorney who says or does something which is not in keeping with the rules of evidence. If this happens do not draw any inference against the side, to whom a warning may be addressed.

[Jurors may take notes during the course of trial, since there may be some complicated issues in which the notes may be helpful. You are not obliged to take any notes. If you do take notes, please keep them in confidence until you retire to deliberate and then remember it's not your notes which are evidence, but your recollection of the testimony and exhibits.]

You will have the exhibits with you in the jury room during you deliberations.

Finally, if you have any personal problems during the trial they should be brought to my attention in writing. You may give a note to a member of my staff who will give it to me. I will respond as quickly as possible if a response is required.

Before we hear opening arguments, I want to read the Indictment to you. As I have told you, the Indictment is not evidence of any kind, and you are to draw no conclusions or inferences from it.

[In the course of reading the Indictment I will mention a number of sections of the code of laws of the United States. I will not read these sections to you at this time. At the end of this case and during the course of my instructions on the law, I will then read these sections to

Judge Avern Cohn: Preliminary Jury Instructions - Criminal

you.]

[The Indictment names as defendants a number of persons who are not on trial here today. You should not speculate why they are not here or whether they are innocent or guilty on the charges set forth in the Indictment.]

[READ INDICTMENT]

VOIR DIRE FOR JURORS - CRIMINAL

1. Will each of you please stand and recite in a loud voice?
 - your name, including the way it is spelled;
 - your present address - any other address you have lived at during the last five years;
 - your present occupation and name of your employer;
 - if you are retired, your former occupation and length of retirement;
 - your marital and family status;
 - your spouse's occupation;
 - your education;
 - your membership in any organized group, club or fraternal organization
2. Do any of you have any prior knowledge of this case?
 - Have you read about it in any newspaper or publication?
 - Have you heard about it, either on radio or on television?
3. Do any of you know the defendant or any of the attorneys whom I've introduced to you?

Judge Avern Cohn: Preliminary Jury Instructions - Criminal

3A. Do any of you know any of the following persons?*

* Obtain lists of prospective witnesses from parties.

4. Do any of you have any prior experience in court, such as a juror, as a plaintiff, as a defendant, or as a witness in a lawsuit?**
5. Do any of you have any close friends or relatives which have had any prior experience in court such as I have just described?
6. Do any of you have any prior connection or present connection with any government agency, federal, state or local? This includes a law enforcement agency, such as a police department or prosecutor's office.
7. Does any member of your family or close relative or friend have any present or prior connection with any government agency such as I just described?
8. Have you or any member of your family or close relative or friend ever been the victim or a crime or been a witness in a criminal case?
9. Do any of you have any health problems or potential health problems which would cause you any difficulty in sitting as a juror?

** When there is a "yes" answer follow up with the ultimate question being whether it would affect ability to be a fair and impartial juror or favor one side or the other.

10. Do any of you have any feelings about undercover agents, paid informants or electronic surveillance which would prevent a fair consideration of this case?
11. Do you or any close friends or relatives have any prior experience with firearms or narcotics which will prevent you from giving fair consideration of this case?

12. The defendant in this case is black;

- Do any of you have any attitude towards black people that might prevent you from giving the defendant a fair trial?;

- Have any of you had any experience with a member of any race, creed or color other than your own which resulted in any kind of confrontation?;

- Have any of you had any experience at your place of employment or at school or at

Judge Avern Cohn: Preliminary Jury Instructions - Criminal

your residence which makes you feel you could not fairly judge a person of a different race, color or creed?;

- Do any of you feel you have any prejudices or feelings against persons of another race, color or creed so that you could not fairly consider and decide this case on the evidence?

13. Do any of you hold any opinions about courts or defense lawyers or prosecutors or law enforcement officers that would prevent you from fairly considering and deciding this case solely on the evidence?
14. Have you had any experience in the past which causes you to doubt your ability to sit as a fair and impartial juror?
15. If you were on trial, would you be willing to be tried by a juror with the same frame of mind as yours?
16. Would any of you prefer not to serve on a jury in order to avoid having to make a decision about the innocence or of the guilt of a defendant?
17. Do any of you feel that because a defendant is charged with a crime he or she must have done something wrong?
18. The law presumes a person to be innocent unless proven guilty beyond a reasonable doubt. That presumption stays with a defendant throughout the trial and accompanies him into the jury room when you begin your deliberations. This is not obligation on a defendant to prove his innocence. The obligation is always on the government to prove a defendant's guilt and never shifts.

- Do any of you have any trouble with that principle?
19. Certain legal principles are involved in a criminal case. Do any of you believe that the phrase "proven guilty beyond a reasonable doubt" means that you must be convinced beyond any doubt whatsoever of a defendant's guilt before you can find a defendant guilty?
20. Would any of you acquit a defendant even if convinced beyond a reasonable doubt of guilt because you felt sympathy or felt that the defendant deserved a break, or felt that the particular violation involved is a minor one?
21. The law does not compel a defendant in a criminal case to take the witness stand

Judge Avern Cohn: Preliminary Jury Instructions - Criminal

and testify and no presumption of guilt may be raised and no inference of any kind may be drawn from the fact a defendant does not testify. Likewise, the law never imposes on a defendant in a criminal case the duty of calling any witness or producing any evidence. A defendant who wants to testify, however, is a competent witness and the defendant's testimony is to be judged in the same way as that of any other witness.

- Will any of you have any difficulty in applying these principles?

- If the defendant does not testify will any of you hold it against him?

- If the defendant does not testify would it be something that any of you could not completely disregard?

22. Your function is to decide questions of fact; when it comes to the law, however, you are to take your instructions from the court and you are bound by those instructions. You cannot substitute your notions for what you think the law is or should be.

- Do any of you not understand that?

- Do any of you think you will have any trouble with that principle?

23. Do all of you understand that the issues of punishment is strictly to be decided by me, and should not be considered by you in any way in arriving at your verdict?

- Do any of you feel that you would be unable to remove the consideration of punishment from your deliberation?

24. Do each of you understand that if there is conflicting testimony during the trial about certain facts it is your task to try and resolve the conflict and decide which facts deserve to be believed or disbelieved?

25. Do any of you feel that it is improper for the prosecution to reduce or dismiss criminal charges against a witness involved in criminal activity in order to obtain his testimony against others involved in the criminal activity?

26. In this case there will be evidence that the Federal Bureau of Investigation intercepted [telephone] conversations of the defendant during the course of their investigation. [The wiretap was authorized by a court order.] Do any of you feel that it is in any way improper for law enforcement authorities to utilize such intercepts as a tool in investigating suspected criminal activity?

Judge Avern Cohn: Preliminary Jury Instructions - Criminal

27. Would any of you let it prevent you from giving the defendant a fair trial if the testimony were to show that he is what some might call a "bad" person; for example, that he uses bad language or that he has been involved with the law?
- This trial may take some length of time.
 - Do any of you feel that you could not avoid discussing this case with anyone during the course of the trial?
 - Do any of you feel that somehow you will have difficulty in not talking about this case when you go home in the evening?
28. Has any past experience of any of you in any way caused doubt of your ability to sit as an impartial juror?
- Is there any reason at all why you think that you might in any way be unfair or partial to either the government or to the defendant in this case?
29. Would any of you like to tell me or the lawyers anything outside of the hearing of the other jurors about your serving?